

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH**

...

**Original Application No.290/00206/2018**

Reserved on : 18.07.2018

Pronounced on : 20.07.2018

**CORAM:**

**HON'BLE MRS. HINA P.SHAH, MEMBER (J)**

Brajendra Kumar Katiyar s/o Shri Prem Narayan aged about 52 years, R/o E-9, Railway Colony, Gadra Road, Dist. Barmer presently working on the post of SSE/PW, NWR Gadra Road Dist. Barmer (Raj.) .

...Applicant

(By Advocate: Shri S.K.Malik)

Versus

1. Union of India through the General Manager, North Western Railway, Jaipur
2. Senior Divisional Engineer/Central, NWR Jodhpur Division, Jodhpur
3. Shri Praveen Yadav, Senior Assistant Divisional Engineer NWR Samdari, Dist. Barmer.

...Respondents

**ORDER**

Heard Shri S.K.Malik, counsel for the applicant on the question of interim relief.

2. Towards the interim relief, the applicant has prayed as under:-

- i. Respondent No.3 may be directed not to proceed against the applicant in the departmental enquiry

to be held on 20.7.2018 till finalization of criminal case.

- ii. Any other interim relief which this Hon'ble Court deem just and proper be passed in favour of the applicant.

3. The brief facts of the case are as under:-

The applicant, while he was working on the post of SSE/PW, Jaisalmer, entered into hot talk with Assistant Divisional Engineer (ADEN), Jaisalmer on 29.04.2017 with regard to two drums of diesel which were in the charge of the applicant. Accordingly, the ADEN, Jaisalmer filed FIR in the GRP Police Station, Jodhpur with the false allegation that applicant has beaten him and abused him with caste remarks.

The applicant thereafter filed SB Criminal Misc. Petition No.1412/2017 before the Hon'ble Rajasthan High Court, Jodhpur for quashing the FIR to the extent of offence u/s 3(1)(r) and (s) of the SC/ST (Prevention of Atrocities) Act, 1989. The Hon'ble High Court vide its order dated 26.05.2017 quashed the said sections mentioned in the FIR and allowed the petition.

The contention of the applicant is that being prejudiced, the respondents have transferred him to Gadra Road vide letter dated 20.6.2017 and issued chargesheet dated 25.5.2017 which was received by him on 6.9.2017 with the charges that he has assaulted, misbehaved and acted in discourteous manner on 29<sup>th</sup> April, 2017 with his higher official Shri Sher Singh Meena ADEN, Jaisalmer, who was on duty in his chamber. It is also alleged that he unexpectedly attacked Shri Sher Singh Meena with holding

his neck and manhandled him. Later on Shri Meena got released by his office staff from the clutch of Sh. Brajendra Kumar Katiyar (applicant) after hearing the shouts of ADEN/JSM. Therefore, the applicant violated Rule No. 3.1(iii), (xviii), (xix) & 3A(a) of Railway Services (Conduct) Rules 1966 and Para 2.10(b) of G&SR.

The further contention of the applicant is that he replied to the said chargesheet vide letter dated 18.09.2017 and requested not to initiate enquiry but the respondent No.3 without considering his reply fixed the date of enquiry on 29.1.2018, 15.6.2018 and now on 20<sup>th</sup> July, 2018. Respondent No.3 is adamant to proceed with the enquiry by overlooking the orders of the Hon'ble Supreme Court in the case of State Bank of India & Ors. vs. Neelam Nag in Civil Appeal No.4715/2011 as well as DOP&T OM dated 1.8.2007.

The learned counsel for the applicant submitted that the Railway Board Circular and DOP&T OM dated 1.8.2007 clearly states that if the charge in the criminal case is of a grave nature which involved complicated question of law and facts, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case. In the present case, the criminal case is of a grave nature which involves complicated question of law. Based on the same set of facts as that of charges levelled in the chargesheet and witnesses are also same in both the proceedings, therefore, the departmental proceedings should be stayed.

4. The grounds submitted by the applicant are that from perusal of Ann.A/1 and FIR Ann.A/2 as well as charge

sheet at Ann.A/11, the charges against the applicant and that of in the FIR are based on the same set of facts and therefore, serious prejudice will be caused to the applicant, if the said departmental proceedings are not stayed, which would amount to clear violation of provisions of law.

The next ground raised by the applicant is that since the charges against the applicant are of grave nature which involve complicated question of law and facts, therefore, the departmental proceedings should be stayed in the interest of justice till the conclusion of the criminal case. It is further submitted that the adamant nature of Enquiry Officer to proceed with the enquiry is clearly violative of Article 14, 16 and 21 of the Constitution of India.

The third ground raised by the applicant is that action of respondent No.3 to proceed in the enquiry is clearly outcome of colourable exercise of power in the eyes of law and deserves to be condemned and deprecated.

5. After going through the chargesheet in departmental proceedings, it is clear that the same has been issued to the applicant for violation of Rule 3.1(iii)(xviii), xix) & 3A(a) of Railway Service (Conduct) Rules, 1966 and para 2.10 (b) of G&SR and if the criminal charges are same they are u/s 323-332-353 of IPC read with Section 3(1)(r) & (s) of the SC/ST (Prevention of Atrocities) Act, 1989. In the case before the Hon'ble High Court of Rajasthan, though his prayer was for quashing of the FIR, but seeing his restricted prayer the Hon'ble High Court was of the view that:-

"11. After hearing counsel for the parties and perusing the FIR and the documents submitted as well as

precedent law cited at bar by counsel for the petitioner, this Court is of the opinion that FIR specifically read that the alleged incident has taken place in the premises of the office and therefore, the words used in Sub-section (x) is within public view which means that the person would be insulted in public view. Thus, if the person was present and if the alleged incident had taken place within the public view then such offence could have been made out.

12. In light of the aforesaid observations as well as precedent law cited at Bar by counsel for the petitioner, this Court allows the present misc. petition to the extent of quashing the charges pertaining to Section 3(1)(r) & (s) of SC/ST (Prevention of Atrocities) Act, 1989."

6. After going through the grievance and submissions of the applicant that such an offence is of grave nature and that the same involves a complicated question of law and facts, cannot be accepted. The applicant had also by his reply to the chargesheet has prayed that since the matter is pending before the Hon'ble High Court of Rajasthan, let the said court decide the matter as it has already taken cognizance of his case and till that time, no departmental proceedings be conducted.

7. It can be seen from the proceedings that respondent No.3 has stated that as per Railway Board circular dated 9.10.2007 the enquiry can be started despite of a criminal case and asked the applicant to appear before the Enquiry Officer for enquiry at the relevant date at ORH, Jodhpur.

8. The issue in the present case is, therefore, restricted to the point whether the departmental proceedings can proceed further when the criminal proceedings are in

progress. As observed in a catena of judgements of the Hon'ble Apex Court in the cases of State of Rajasthan v. B.K.Meena [1996 SCC (L&S) 1455], M.Paul Anthony vs. Bharat Gold Mines Ltd. [1999 SCC (L&S) 810], NOIDA Entrepreneurs Association vs. NOIDA & Ors., [2007(10) SCC 385] and Kendriya Vidyalaya Sangathan and Others v. T.Srinivas, (2004) 7 SCC 442, the standard of proof required in the departmental proceedings is not the same as required in the criminal proceedings and even if there is acquittal in the criminal proceedings, the same does not bar the departmental proceedings.

9. In view of the ratio decided by the Hon'ble Supreme Court in the cases referred to above, I find no merit in the submissions of the learned counsel for the applicant to stay the departmental enquiry and the same is hereby rejected. The case of State Bank of India and Ors. vs. Neelam Nag pointed by the applicant cannot be made applicable in the present case as the charges in the present criminal case are not so grave.

10. So far as the contention of the applicant that as per DOP&T OM dated 1.8.2007 if the charge in criminal case is of a grave nature which involves complicated question of law and facts, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case. Here, it would be relevant to mention DoP&T OM dated 21<sup>st</sup> July, 2016, whereby it is made clear that department proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar for their being conducted simultaneously, though separately. In the said OM of the DOP&T several judgments of Hon'ble Apex

Court have been discussed, therefore, it is very clear that both proceedings can simultaneously proceed.

11. Hence, as mentioned above, interim relief sought by the applicant directing the respondents not to proceed against the applicant in the departmental enquiry to be held on 20.07.2018 till finalization of criminal case, is rejected.

Issue notices to the respondents for filing their reply.

List the matter on 12.09.2018.

(HINA P.SHAH)

Member (J)

R/